IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/06/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.24917 OF 2001
and
WMP.NO.36978 OF 2001

C. Baskaran,
Rose Mazeeka Illam,
2/195/A5, Escikyapuram,
Naidupuram Via Kodaikanal,
Dindigul District. .. Petitioner

-Vs-

1. The Managing Director,
Tamil Nadu State Transport
Corporation, Dindigul.

2. The General Manager,
Tamil Nadu State Transport
Corporation, Madurai Division/IV,
Dindigul.

3. The Branch Manager,
Tamil Nadu State Transport
Corporation,Kodaikanal Depot,
Kodaikanal, Dindigul District.

4. Mr.N. Balasubramanian,
Branch Manager,
Tamil Nadu State Transport
Corporation, Kodaikanal Depot,
Kodaikanal, Dindigul District.

5. Haritheerthane,
Security Officer,
Tamil Nadu State Transport
Corporation, Head Office,
Collectorate Post, Dindigul 624 004. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.K. Shanmugakani

For Respondents 1-2 : Mr.S. Mohana Sundarajan

Respondents 3-4 : Mr. Muthukumarasamy
Addl. Advocate General for
Mr. A.Jinasenan

Respondent-5 : P. Sanjay Ganthi

:J U D G M E N T
The petitioner joined services in Rani Mangammal Transport Corporation in 1980 as a Mechanic and subsequently he was promoted and presently holding the post of Tradesman. The said Transport Corporation has subsequently been abolished and renamed as Tamil Nadu State Transport

Corporation. The petitioner has challenged the order of suspension dated 24.11.2001. The order of suspension passed by the General Manager is quoted hereunder in extensio :

 . . . Subject : In the complaint dated 17.6.2001 given to the Management, a complaint has been made against the Security Officer, Transport Corporation alleging that Mr. Haritheertham, Security Officer, Government Transport Corporation, Dindigul, who stayed in the depotsuite at Kodaikanal alongwith his family members on 16.06.01 in the night, after his return from sight-seeing on 17.06.01 Morning, under the pretext that the M.D. had asked him to conduct an enquiry regarding the untoward incident which took place in Kodaikanal branch on 22.05 .01, commenced his enquiry in a threatening manner with each of the employee. He threatened me to withdraw the complaint given by me. Liquor smell was present on his person, at the time of threatening me. Further, he threatened harshly Mr.K. Gajendran, Mechanic and compelled and obtained his signature. Apart from this, the act of the Security Officer, on 22.05.01, in Kodaikanal depot after consuming liquor and having eaten non-vegetarian alongwith the gang which created commotion in a drunken state is painful. When, the Security Officer was questioned regarding your complaint, he submitted an explanation stating that all the allegations made in the letter dated 17.6.01 are baseless, malicious and it is a false and fictitious complaint against truth with a pre-planned and malafide intention and that it is a false complaint stated with a pre-planned intention to create a blemish to his post-Regarding.

An order of suspension is passed based on the enquiry, from 24.11.01 , as the complaint against you, regarding the incident mentioned in the subject is severe in nature.

You are informed that you will be issued a detailed charge-memo regarding this, in due course.

2. It is alleged by the petitioner that the order of suspension has been passed with ulterior motive as the petitioner had made several complaints against various officials of the respondent Corporation.

It is also contended that the order of suspension is in violation of the Standing Orders.

3. A counter affidavit has been filed on behalf of the second respondent, who has passed the order of suspension. The allegations regarding the malafides had been denied.

4. Ordinarily the right of an employer to suspend an employee in contemplation of a disciplinary proceedings is inherent and such order of suspension is not liable to be interfered with by Court of Law unless it is proved that the order of suspension is actuated by malafides or is contrary to the relevant rules and regulations relating to the particular organization. In the present case, it is contended that the order of suspension is in violation of the Standing Orders. The copy of the Certified Standing Orders relating to the Corporation has been produced. Standing Order 17 relates to punishment for misconduct. Standing Order 17(4)(a) relates to suspension in contemplation or during pendency of a disciplinary proceedings.

The provision is as follows :

 17(4)(a). Where disciplinary proceedings against a workman is contemplated or is pending or where criminal proceedings against him in respect of any offence are in progress and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the workman within a week from the date of suspension.

5. A perusal of the aforesaid provision makes it clear that in contemplation of a disciplinary proceedings or during the pendency of the disciplinary proceedings, an order of suspension may be passed where the employer is satisfied that it is necessary or desirable to place the workman under suspension. In other words, before passing any order of suspension, the employer should come to the conclusion that it is necessary to suspend the person or desirable to suspend the person. Obviously, the employer should be satisfied about the necessity or desirability of suspending the particular person. In the present case, neither the order of suspension nor any other materials produced by the respondent indicates that the employer had come to such a conclusion that it was necessary or desirable to suspend the person. The order of suspension merely recounts about the allegations made by the present petitioner against the Security Officer and it is indicated that such allegations by the petitioner were false. There is nothing to indicate as to whether the necessity or desirability to suspend had been considered by the employer before passing the order of suspension. In the absence of any such material to indicate that the employer had thought it necessary to desirable to place the person under suspension, I am of the opinion that the order of suspension was not in accordance with the Standing Order 17(4). Moreover, the order of suspension has remained stayed by the order passed by this Court. Therefore, instead of reviving the order of suspension, at this distant point,

interest of justice should be served by directing the employer to finalise the disciplinary proceedings as expeditiously as possible.

6. For the aforesaid reasons, the writ petition is disposed of with the following observations :-

(1) The order of suspension is quashed.

(2) The disciplinary proceedings shall be disposed of in accordance with law as expeditiously as possible, preferably within a period of six months from the date of communication of this order.

It is made clear that no opinion has been expressed regarding the contention relating to malafides as raised by the petitioner. No costs. Consequently, WMP.No.36978 of 2001 is closed.

Index : Yes
Internet : Yes

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To

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